82-93

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No._____

In The

SUPREME COURT OF THE UNITED STATES

October Term, 1981

RODNEY F. STICH,

Petitioner

v.

NATIONAL TRANSPORTATION SAFETY BOARD,
UNITED STATES GOVERNMENT,

Respondents

ON A WRIT OF CERTIORARI TO THE UNITED STATES

COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF FOR PETITIONER

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

Petitioner, Rodney F. Stich, petitions for a writ of certiorari to review the judgment of the United States Court of Appeals, rendered herein on May 27, 1982.

QUESTIONS PRESENTED FOR REVIEW

1. Did the U.S. Court of Appeals err by dismissing this action, claiming that petitioner had not personally suffered real or threatened injury as a result of alleged misconduct by the NTSB, and thus had no standing?

2. Did the U.S. District Court err by refusing to accept jurisdiction of this Mandamus action, claiming petitioner's allegations of gross abuse of discretion and culpable misconduct by the NTSB is actually an "appeal" of an NTSB order, which would then belong in the U.S. Court of Appeals?

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OPINIONS

The opinion of the U.S. Court of Appeals:

Appellant Rodney Stich is a former air safety investigator for the Federal Aviation Administration with a continuing interest in air safety. In 1978 a PSA jet crashed in San Diego, California. The NTSB conducted the accident investigation and publicly reported its findings. Stich filed a motion to reopen the investigation, which motion was denied. Stich then filed an action for mandamus in the district court which was dismissed for lack of jurisdiction.

Stich appeals the dismissal of his petition for a writ of mandamus by the district court. He argues that the district court had jurisdiction and that he had standing to sue. Although appellant's concern for the safety of future airline passengers is commendable, in view of the recent decision of the United States Supreme Court in Valley Forge Christian College v. American United for Separation of Church and State, Inc., 102 S. Ct. 752

(1982), the judgment must be affirmed.

Article III of the United States Constitution limits federal court jurisdiction to "cases or controversies." Consistent with this limitation, litigants may not make claims for relief in federal court without showing an actual or threatened personal injury. "(A)t an irreducible minimum, Art. III requires the party who invokes the court's authority to 'show that he personally has suffered some actual or threatened injury as a result of the putatively illegal conduct of the defendant....' " Valley Forge, supra, 102 s. Ct. at 758, quoting Gladstone, Realtors v. Village of Bellwood, 441 U.S. 91, 99, 99 S.Ct. 1601, 1608 (1979). Even absent an article III bar, this court should refrain from adjudicating disputes based on generalized grievances shared by all citizens. Warth v. Seldin, 422 U.S. 490, 499-500, 95 S. Ct. 2197, 2205-06 (1975).

Stich's concern, the risk of future airline crashes, is real enough. That concern does not, however, rise to the level of an actual or threatened injury. The risk is shared by Americans generally. Absent an injury which

threatens Stich in a way which distinguishes him from the populace as a whole, federal court action is barred.

Affirmed.

JURISDICTION

The judgment of the U.S. Court of Appeals for which review is sought was entered on May 27, 1982. The jurisdiction of this Court is invoked under 28 U.S.C. 1254 (a) and 28 U.S.C. 2101 (c). The mandate of the Court of Appeals was dated May 27, 1982, affirming the dismissal by the U.S. District Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS - INVOLVED

The Federal constitutional provision involved is the Due Process Clause of the Fifth Amendment to the Constitution of the United States: "No person shall be...deprived of life, liberty, or property, without due process of law;...Amend 5. This clause protects vested rights from destruction by the federal government. Darlinton v. Board of Councilmen of City of Frankfurt, 1940, 140 S.W. 2d, 392, 282 Ky. 778"

CONSTITUTION--STATUTES

Supreme Court 73-762L "The fundamental aspect of standing is that it focuses on the party seeking to get his complaint before a federal court and not on the issues he wishes to have adjudicated. The 'gist of the question of standing' is whether the party seeking relief has 'alleged such a personnal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions.' Baker v. Carr, 369 U.S. 186, 204 (1962). In other words, when standing is placed in issue in a case, the question is whether the person whose standing is challenged is a proper party to request an adjudication of a particular issue and not whether the issue itself is justiciable." Flast v. Cohen, supra, at 99-100.

5 USC 702: "Standing to sue is not limited to those who have been 'significantly' affected by agency action;" identifiable trifle is enough for standing to fight out a question of principle, such trifle being basis for stand-

ing and the principle supplying motivation. United States v. Students Challenging Regulatory Agency Procedures (SCRAP) (1973) 412 US 669, 37 L Ed 2d 254, 93 S Ct 2405.

Supreme Court 73-762: There must be a named plaintiff initiating the action who has an existing controversy with the defendant, whether the plaintiff is suing on his own behalf or on behalf of a class as well.

STATEMENT OF THE CASE

This action involves the petitioner's attempts to obtain a writ via Mandamus, ordering the National Transportation Safety Board (NTSB) to reopen the investigation into the probable cause of the PSA crash at San Diego on September 25, 1978.

The National Transportation Safety Act provides for the NTSB to reopen an accident investigation when new and pertinent information is offered, that could change the probable cause of the crash. Petitioner, an aviation safety expert with unusual technical qualifications and background, had uncovered new and pertinent information of a highly sensitive nature during his private investigation into the PSA crash, that would explain more than anything else the underlying cause of that accident. Such identification would permit corrective attention and action to be focused on a long-standing air safety problem.

As provided by the Act, petitioner petitioned the NTSB to reopen the investigation into the PSA crash,

and permit introduction of this new evidence petitioner uncovered, explaining the nature and obvious importance of the information for determining the factors responsible for the pilot's lack of alertness and responsiveness that were the direct causes of the crash.

During this same time frame the petitioner also discovered that the NTSB was actively and aggressively covering up for still other information supporting petitioner's discovery, making it apparent that the NTSB was deliberately covering up for a highly sensitive matter and altering the official accident report, deleting the probable true cause of why the great tragedy occurred.

With the discovery that the NTSB was deliberately tampering with its responsibilities in the accident investigation and report, petitioner recognized that judicial intervention would be absolutely necessary, via Mandamus. Petitioner filed a Mandamus action in the appropriate court--the U.S. District Court for the Northern District of California, alleging gross abuse of discretion and culpable misconduct upon the part of

the NTSB.

Approximately two months after the deadline for answering, and no answer forthcoming, petitioner filed a request with the court to enter default, and for a hearing to enter a default judgment, as provided by FRCiv.P 55(a). Thereafter the NTSB filed an answer as if no default had existed, and moved to have petitioner's action dismissed.

The U.S. District Court ignored the NTSB's default status and ignored the responsibility to enter the NTSB's default. While expressing concern about the seriousness of petitioner's allegations and expressing a desire to hear the action, the court dismissed the Mandamus proceedings, claiming petitioner was appealing an NTSB order and thus should have filed in action in the U.S. Court of Appeals.

Petitioner then appealed this dismissal by the District Court to the U.S. Court of Appeals. The Appeals Court dismissed the action, claiming petitioner was not threatened with injury as a result of the alleged NTSB conduct, and thus had no standing to bring this action.

Petitioner then filed this writ of certiorari with the United States Supreme Court.

ARGUMENT

The main question requiring an answer pertains to whether petitioner has standing to bring this action, that being the alleged basis used by the U.S. Court of Appeals for dismissing petitioner's action. The reasoning for the alleged lack of standing was that petitioner was not threatened with injury as a result of the alleged NTSB misconduct of covering up for the probable underlying cause of the PSA San Diego crash.

Petitioner is a highly experienced aviation safety expert, and for the past 40 years has been a pilot in military, airline, general aviation and government air safety activities. As a government safety investigator, by law, petitioner held the responsibilities for making determinations of air safety problems. He has written many air safety directives, airline flight procedure

manuals, investigated safety irregularities, participated in industry air safety activities, for many years, and appeared as a technical speaker, guest, and debater on over 400 radio and television shows discussing air safety problems and the behind-the-scene misconduct that often plays a culpable part in the crashes. His capability for determining what and who constitutes an air safety problem or who is being threatened with injury would have a high level of credibility and accuracy.

Petitioner has the added benefit of having worked with the NTSB in an official government capacity, while an FAA air safety investigator, and had frequently seen and reported falsification and "doctoring" of official accident reports so as to protect a particular interest. This culpable practice shifted attention away from a sensitive area, protected some vested interest, sometimes the NTSB itself, often continuing the safety problem or irregularity with its involvement in still other crashes.

The extent of this NTSB misconduct, and the crashes resulting from it, are described and documented in

considerable detail in petitioner's earlier action filed in the U.S. District Court for the Northern District of California (74-982RHS) and in the U.S. Court of Appeals (75-2300).

The evidence that the petitioner is seeking to introduce, and the NTSB is intent to cover up, strongly indicates that all-night partying occurred prior to the flight's departure, by unknown members of the PSA crew. If this is correct, and there is very strong evidence supporting that fact, it would explain the poor alertness and reactions of the PSA flight crew as their aircraft rammed into the rear of the small plane.

Covering up for significant accident-causing safety irregularities, such as the reported all-night, fatigue-causing partying, endangers everyone in the nation's airspace, including petitioner who frequently flies his own twin-engine aircraft in such environment. It is not only the cover up of the reported partying per se that endangers the petitioner and others, but also the culpable misconduct by the NTSB itself. In petitioner's earlier action the mechanics are described in detail of

how this coverup continues the dangers and plays a part in subsequent crashes. Petitioner, among others, is thus threatened with injury as a result of NTSB coverup actions.

The primary purpose for the requirement that a person bringing a Mandamus action be threatened with injury is to increase the probability that the action will be pursued with sufficient motivation to properly present the case to the court. The nature of the present action is such that there is no other person ready, willing and able to pursue this matter. If petitioner is not allowed to present this action, the NTSB culpable misconduct will probably never be exposed. The activities involved in petitioner's prior action (74-982RHS) shows the strong motivation and preparation by the petitioner to pursue this serious subject. Petitioner has the unusual combination of technical knowledge and background experience, along with the newly discovered evidence, to bring this matter of great national importance before the court.

Many persons in all three branches of government

are involved in protecting the crash-related NTSB misconduct of the past, and also the culpable acts associted with the PSA San Diego crash, creating heavy pressures and incentives for judicial blocking of this action. The NTSB coverup problem involving the PSA crash was recognized by the assistant U.S. Attorney who, shortly before filing the motion to dismiss this action, admitted to petitioner that the NTSB obviously did not conduct a valid investigation into the reported PSA partying; that there appeared to be a coverup by the NTSB; that he would not be a part of any such coverup; and that he was recommending to his Washington superiors that the NTSB be ordered to reopen the investigation into the PSA crash as it pertains to the reported partying. He was apparently overruled by Washington, as petitioner expected, because of the issues that would be raised by such reopening of the PSA crash investigation. To have required the NTSB to reopen the investigation into the reported partying would have opened a virtual "Pandora's box," exposing long-standing NTSB and FAA crash-related misconduct.

The U.S. District Court recognized the seriousness of the issues raised by petitioner's action, and expressed a desire to hear the Mandamus action, but then circumvented its responsibilities by giving the Mandamus action another label, stating that petitioner's action was actually an appeal of an NTSB order. This required stretching of the facts beyond the limits of reason, suggesting judicial mischief to keep this matter from reaching public attention. The contents of the complaint and the heading makes it obvious that this Mandamus action is not, and should not be, an appeal of an NTSB order, but an exposure of long-standing crash-related misconduct.

The petitioner could have filed this Mandamus action before, during, or after the NTSB refused to reopen the investigation into the PSA crash. The request to the NTSB was more procedural than with any expectation of a positive response. The NTSB was too deeply involved in the PSA coverup to reopen the accident hearing, facing the many questions that would surely follow. After the petitioner discovered that the NTSB

was covering up for the reported crew partying the petitioner recognized that the NTSB was engaging in gross abuse of discretion and culpable misconduct, requiring judicial intervention.

A Mandamus action is the obvious and commonly-used judicial approach to address such administrative misconduct. Petitioner obviously could not request of the NTSB to investigate itself in such a serious and deliberate violation of aviation and criminal statutes. To state that the petitioner has no judicial relief in such serious misconduct would be feigning ignorance of the judicial process.

One of the statutes conferring jurisdiction upon the District Courts for actions alleging government misconduct is 28 U.S.C. 1361, which states in part:

> The district courts shall have original jurisdiction of any action in the nature of mandamus to compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff.

The NTSB has a duty to the petitioner, among

others, to properly and legally investigate aircraft accidents and to report on the true causes, so that proper corrective actions can be taken. This important and sensitive matter cannot be met when the NTSB "doctors" or falsifies accident reports, omitting data that causes a continuation of the accident-causing problem.

Previous crashes and safety problems that had reports falsified, some of which had been discovered and reported by petitioner while he was a government air safety investigator, include, among other mishaps, a DC-8 crash into New York City; a DC-8 crash at Denver; a Boeing 727 crash at Salt Lake City; a DC-8 crash at Portland; and others. An examination of the behind-the-scene NTSB misconduct shows that everyone, including the petitioner, who flies in the nation's airspace, are threatened with injury when the NTSB engages in coverup of major air safety irregularities. Every one of the above crashes had been preceded by major safety irregularities that were known to exist by the FAA and the NTSB, and covered up by acts contrary

to federal laws.

If the courts continue to engage in judicial mischief to protect this situation with such tragic consequences it will continue to play a part in forcing the continuation of the hazards, injuries and deaths experienced by those occupying the nation's airspace.

Another question to be considered, reflecting upon the lower courts' determination to obstruct the progress of this action, is the validity of the NTSB's motion in the U.S. District Court seeking to dismiss petitioner's action, such motion made while the NTSB was in major default, without the right to file such motion. By failing to answer petitioner's initial complaint within the time allowed--the NTSB was over two month's overdue for submitting their answer--the defendants lost their right to move for dismissal. The clerk of the U.S. District Court had already been instructed to enter the default, as provided by FRCiv.P. 55(a), but the court honored the NTSB's motion-to-dismiss as if the default had never occurred. At best, this benevolence was judicial error.

SUMMARY

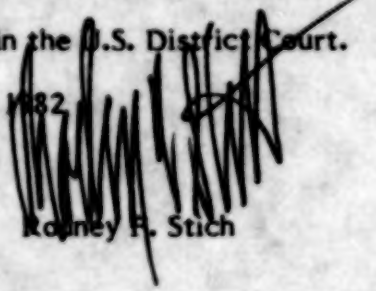
The courts are going to extremes to avoid hearing this action, probably to avoid public attention to a long-standing problem within the two government agencies responsible for air safety, which includes the respondent. The district courts have the jurisdiction to hear actions involving gross abuse of discretion by a government agency, and the mandamus action is a key judicial mechanism for such judicial appeals. Of that there can be no dispute. The requirements for standing are primarily to insure that the person bringing the action is proceeding with sufficient determination to present the case, and there has been years of aggressive pursuit by the petitioner to expose the culpable misconduct of the respondents. All the legal requirements to hear this action have been met. The problem has been the determination by the federal courts that any exposure attempt be thwarted. If the petitioner had no case or statutory law to support his attempts to bring this matter before the court--which is not the case--the unusual and serious nature of the respondents action would qualify this for a Sui Generis action, enabling the

court to hear it, regardless of any pseudo excuses

RELIEF REQUESTED

Petitioner is requesting the United States Supreme Court to recognize the importance of this matter, to recognize the legal rights of the petitioner, the judicial mischief that has already occurred, the consequences of any further coverup, and insure that this matter be properly heard in the U.S. District Court.

Dated: July 17, 1982



Rodney R. Stich